

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 548 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

RAMESHBHAI DHULABHAI PATEL

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Appearance:

R.C. Kodekar, Assistant Public Prosecutor for the  
appellant  
Respondent served

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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 11/10/1999

ORAL JUDGEMENT

1. By means of filing this appeal under Section 378  
of the Code of Criminal Procedure, 1973, the State of  
Gujarat has questioned correctness and legality of the  
judgment and order dated April 30, 1991, rendered by the  
learned Chief Judicial Magistrate, Bharuch, in Criminal  
Case No.783 of 1987, acquitting the respondent of the  
offences punishable under Sections 409, 465, 468, 474 and

477(A) of the Indian Penal Code.

2. It is the case of the prosecution that the respondent was serving as a Clerk in the Primary Health Center at Rajuvadia, Taluka Jambusar, during the year 1978-79. The respondent was in-charge of the financial transaction more particularly preparation of pay-bills of the staff of the Primary Health Center. It was found that, during the tenure of the respondent with the Primary Health Center, certain amounts were deducted from the pay-bills of the staff members of the Primary Health Center, which were not deposited either in the Bank or in the Post Office. A complaint came to be lodged before the Bhalod-Umallia Police Station which came to be registered as first information report No.49 of 1980 for the offences punishable under Sections 409, 465, 468, 474 and 477-A of the Indian Penal Code. The Investigation Officer recorded statements of various staff members of the Primary Health Center and collected incriminating evidence with regard to vouchers of deduction of CTD, GPF, Insurance and Diwali and Food Advances, etc. During investigation, it was found out that, even though amounts under various heads were deducted from the salary of different staff members of the Primary Health Center, the said amount was not deposited either in the Bank or in the Post Office. After completing investigation, chargesheet came to be filed in the Court of the learned Judicial Magistrate (First Class), Bharuch, which was numbered as Criminal Case No.783 of 1987. Charge Exh.7 was framed by the learned Chief Judicial Magistrate, Rajpipla, which was read over and explained to the respondent. The respondent did not plead guilty to the charge and claimed to be tried. Therefore, the prosecution, in support of its case, examined as many as 38 witnesses and produced voluminous documentary evidence against the respondent. After recording of evidence of prosecution witnesses was over, further statement of the respondent was recorded under Section 313 of the Code of Criminal Procedure, 1973. In his statement, the respondent denied the case of the prosecution. The defence of the respondent was that he was falsely involved in the case and he has not committed any offence.

3. On appreciation of the evidence led by the prosecution, the learned Chief Judicial Magistrate concluded that the evidence led by the prosecution did not prove that the respondent, while on duty, had committed offences alleged against him. It was further concluded that the prosecution had failed to prove that the respondent was in-charge of preparing vouchers

relating to PF, CPD, Food and Diwali Advance, and TDS, and he had not deposited the amounts of those deductions either in the Bank or in the Post office. The learned Magistrate further concluded that the witnesses examined by the prosecution did not support the prosecution case against the respondent, with the result that the prosecution has failed to prove the charges levelled against the respondent. It was also concluded by the learned Magistrate that the prosecution has not examined hand-writing expert to prove the hand-writing of the respondent in various vouchers and pay-bills. The learned Magistrate has further concluded that many witnesses turned hostile and did not support the prosecution case and, to prove the contradiction of those witnesses, none was examined, which was fatal to the prosecution case. On the basis of the abovereferred to conclusion, the learned Chief Judicial Magistrate, Bharuch, acquitted the respondent by judgment and order dated April 30, 1991, for the offences with which he was charged, giving rise to the present appeal.

4. Mr. Kodekar, learned Additional Public Prosecutor, has taken me through the evidence of the prosecution. The learned APP submitted that the prosecution had proved the charges levelled against the respondent by examining as many as 38 witnesses and the learned Magistrate has misread the evidence of those witnesses and had acquitted the respondent. It is submitted that the respondent was a public servant and had committed serious irregularities with regard to the amounts recovered from the staff members of the Primary Health Center and the deductions made from the pay-bills had not been deposited either in the Bank or in the Post Office. The learned Additional Public Prosecutor has further submitted that the prosecution has led sufficient evidence proving the charge levelled against the respondent and, since the charges were proved, it was not necessary for the prosecution to examine hand-writing expert or investigation officer and, therefore, the appeal be allowed and the respondent be convicted for the offence with which he was charged.

5. In my view, there is no substance in any of the contentions urged on behalf of the appellant. The evidence, which was led before the Trial Court, was not sufficient to prove the charges levelled against the respondent. The oral evidence of the witnesses examined in the Trial Court was read over by the learned Additional Public Prosecutor at the time of hearing of the appeal. But, the evidence led by the prosecution was not sufficient to bring home the offences alleged to have

been committed by the respondent. In criminal jurisprudence, quantity of witnesses examined by the prosecution is immaterial. It is the quality of evidence of witnesses which is important to establish guilt of an accused. Merely because as many as 38 witnesses were examined by the prosecution is not material to prove the guilt. The evidence of the witnesses who were examined before the Trial Court was sketchy and was not sufficient to prove the irregularities committed by the respondent while he was discharging his functions as public servant at the Primary Health Center at Rajuvadia. In my view, the learned Chief Judicial Magistrate did not commit any error in observing that the prosecution witnesses, who were examined, did not prove that the respondent was in charge of preparation of bills and vouchers raised on various heads. Therefore, the findings of the learned Magistrate cannot be called perverse or illegal. The witnesses who were examined turned hostile and the prosecution has chosen not to examine the Investigation Officer to prove the contradictions. The Investigating Agency had carried out the investigation in most cavalier and perfunctory manner. Under the circumstances, it cannot be said that any error is committed by the learned Chief Judicial Magistrate in acquitting the respondent of the offences with which he was charged.

6. This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Magistrate who had an advantage of observing demeanour of witness. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondent. Suffice it to say that the learned Magistrate has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Magistrate in order to convince us to take the view contrary to the one already taken by the learned Magistrate. Therefore, the acquittal appeal deserves to be rejected.

7. For the foregoing reasons, I do not find any substance in the appeal. The appeal, therefore, fails and is dismissed.

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( swamy )